Mr. SPEAKER.—The question is :

"That the Mysore Highways Bill, 1963, as amended, be passed."

The motion was adopted.

THE MYSORE COURT-FEES AND SUITS VALUATION (AMENDMENT) BILL, 1963.

(*Motion to consider.*)

Sri M. V. RAMA RAO (Minister for Law).—Sir, I move :

"That the Mysore Court-fees and Suits Valuation (Amendment) Bill, 1963, be taken into consideration."

Mr. SPEAKER.—Motion moved :

"That the Mysore Court-fees and Suits Valuation (Amendment) Bill, 1963, be taken into consideration."

†Sri M. V. RAMA RAO.—Sir, this is an Amending Bill to the Mysore Court fees and Suits Valuation Act, 1958, which was passed as Act No. XVI of 1958, modifying and consolidating the law relating to the levy of court-fees and valuation of suits for the purpose of determining the jurisdiction and payment of court-fees.

The main features of this Amending Bill are firstly to provide for exemption in respect of court-fees payable on plaints and memoranda of appeal and other documents on which court-fees are at present payable. In cases where the suits, memoranda of appeal and other documents are filed by the Government or authorities subordinate to the Government, for that purpose, clause 3 which is introduced in this Amending Bill seeks to provide for the amendment of Section 4 of the Principal Act, namely, the Mysore Court-fees and Suits Valuation Act, 1958. Section 4 of the Principal Act which is in force at present, reads like this :

"*4. Levy of Fee in Courts and Public Offices.*—

No document which is chargeable with fee under this Act shall—

(i) be filed, exhibited or recorded in or be acted on or furnished by, any court including the High Court, or

(ii) be filed, exhibited or recorded in any pnblic office, or be acted or are furnished by any public officer,

unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under this Act :

Provided that, whenever the filing or exhibition in a criminal court of a document in respect of which the proper fee has not been paid is in the opinion of the court necessary to prevent a failure of justice, nothing contained in this section shall be deemed to prohibit such a filing or exhibition."

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To this section, the amendment that is proposed is to add further proviso to say that:

> "Provided further that no fee shall be payable in respect of any document filed, exhibited or recorded by or on behalf of the State Government or any officer of the State Government in his official capacity or act or furnished to the State Government or any officer of the State Government in his official capacity."

Then the next amendment is in section 50. The object of this amendment is to provide that in valuing suits for the purpose of determining jurisdiction and in the matter of valuing suits for the purposes of levying court fees, the present provisions shall be modified as proposed in clause 4. At present under section 50 of the existing Act, this is what is provided in respect of valuation of suits:

> "Suits not otherwise provided for.—(1) In a suit as to whose value for the purpose of determining the jurisdiction of courts, specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same."
>
> "(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of courts shall be the market value or where it is not possible to estimate it at a money value, such amount as the plaintiff shall state in the plaint."

The proposed amendent is according to sub-section (1) of sectien 50:

> "In a suit as to whose value for the purpose of determining the jurisdiction of courts, specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same."

In the case of the agricultural land which is not a garden land unde section 7 of the Court-fees and Suits Valuation Act, the market value for the purpose of court-fees will be a multiple of the land revenue payable for that land. This multiple is very much less than the actual market value of the land. Consequently, suits in respect of very valuable lands will have to be instituted in lower courts. It is considered that for the purposes of jurisdiction the actual market value of such land should be taken into consideration and not the market value as determined for purpose of payment of court-fees according to the formula indicated there. This will enable parties to have the dispute adjudicated in a court of higher jurisdiction. Section 7 of the Court-fees and

Suits Valuation Act provides for the method of determining the market value in respect of suits:

"Determination of market value.—(1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

"(2) The market value of land in suits falling under section 24(a), 24(b), 26(a), 27, 28, 29, 31, 35(1), 35 2), 35 3), 36, 38, 39 or 45 shall be deemed to be —

(*a*) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Deputy Commissioner's register as separately assessed with such revenue, and such revenue is permanently settled–twenty-five times the revenue so payable;

(*b*) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid, and such revenue is settled, but not permanently–twelve and a half times the revenue so payable;

(*c*) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, fifteen times the net profits if any from the land during the year next before the date of presenting the plaint or thirty times the revenue payable on the same extent of similar land in the neighbourhood, whichever is lower;

(*d*) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as abovementioned or the land is a garden or the land is a house site whether assessed to full revenue or not, or is land not falling within the foregoing description–the market value of the land.

"*Explanation.*—The word 'estate', as used in this ection means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which in the absence of such engagement shall have been separately assessed with revenue."

While this is the procedure for determining the market value of the land, what is proposed to be done now is:

"To sub-section (1) of section 50 of the principal Act, the following proviso shall be added, namely:—

"Provided that notwithstanding anything contained in subsection (2) of section 7 (which I just now read), the value of

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land specified in clause (*a*), (*b*) or (*c*) of the said sub-section shall, for purposes of determining the jurisdiction of courts, be the market value of such land."

The computation of court-fees would not be affected by the amendment that is now sought to be made to section 50. Only the valuation of the suit for purposes of determining jurisdiction as to the court in which the suit is to be filed, the value of the subject matter in litigation will have to be determined at the market value of the subject-matter of the litigant.

The other amendment is to section 70.

"For sub-section (1) of section 70 of the principal Act, the following sub-section shall be substituted, namely :—

"(1) The State Government may, by notification in the official Gazette, reduce or remit, in the whole or any part of the State of Mysore, if in the opinion of the State Government, it is necessary in public interest so to do, the fee payable in respect of any particular class of documents or any of the documents belonging to such class, or any documents when filed, exhibited or recorded by or acted on or furnished to, any particular class of persons or any members of such class ; and may in like manner cancel or vary such notification."

It will be seen that the existing provision in section 70, is with respect to the power to reduce or remit fees.

"(1) The State Government may, by notification in the official Gazette, reduce or remit, all or any of the fees chargeable under this Act, and may, in like manner, cancel or vary such notification."

That is the section as it is at present. And the proposed amendment is necessary because under the existing provision, the State Government is not enabled to reduce or remit fees payable under the Act in respect of particular classes of documents or documents belonging to any class, or documents filed, exhibited or recorded by or acted on or furnished to any particular class of persons or members of such class. It has not therefore been possible to reduce or remit the fees payable in respect of classes of documents or documents on which court fee is payable by particular class of persons. In order to enable the Government to reduce or remit the fees in such cases, it is considered necessary to amend this sub-section on the lines of sub-section (1) (a) of section 9 of the Mysore Stamp Act, 1957.

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There are some other minor amendments in some of the other provisions of the existing Act. But the most important among them is

contained in clause 9. In Article 5 of Schedule I to the Mysore Court-fees and Suits Valuation Act, 1958, provision is made prescribing the court-fee payable on application for review of judgment. The existing provision in Article 5, reads as follows :—

"Application for review of judgment: One-half of the fee leviable on the plaint or memorandum of appeal comprising the relief sought in the application for review." In place of this existing provision, it is proposed to have the following Article :

"in Article 5, in column (2), after the word "judgment", the words "if presented before the ninetieth day from the date of the decree" shall be added "

"in column (3), the words "comprising the relief sought in the application for review" shall be omitted.

"after Article 5, the following Article shall be inserted, namely :—

"5A. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree. The fee leviable on the plaint or memorandum of appeal.

Then according to clause (*a*) of sub-section (1) of Section 77 of the existing Act, the High Court may make rules to provide for the fees payable by the High Court in its appellate jurisdiction. There is no provision under which the High Court can make rules in its original jurisdiction. It is, therefore, proposed to delete the words, "in its appellate jurisdiction" in this clause. This is in clause 8, amendment of Section 77. Then, the only other amendment of any importance is the amendment of Schedule II in clause 10 :

"In Schedule II, in column (2) of Article 9, after the word "report", the word "order" shall be inserted ;

"for the words 'office of any public officer", the words "public office" shall be substituted '.

It is considered that the expression 'office of any public officer' is unnecessarily confusing.

"In Article 10, in clause (*a*), after the word, "Excise" the words "or Prohibition" shall be inserted.

"in clause (*c*), for the words "Municipal Council, Executive Officer or Commissioners", the words, "Municipal Corporation, Municipal Council, Sanitary Board, Notified Area Committee, Town area Committee, Panchayet, the Commissioner, Executive Officer, Chief Officer, Secretary, President or Chairman" shall be substituted.

"in clause (*j*), for the words "Mysore Board of Revenue", the words "Mysore Revenue Appellate Tribunal" shall be substituted."

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"in Article 11, in clause (*b*), for the words "Board of executive officer", the words "Board, statutory authority or public officer" shall be substituted";

"after the word "Board" in the second and third places where it occurs, the words "statutory authority" shall be inserted;"

"in clause (*e*), after the words "Deputy Commissioner", the words "or other revenue officer" shall be inserted;"

"in clause (*f*), for the words "Sixty-two naye paise", the words "Seventy-five naye paise" shall be substituted;"

This is with a view to have the multiplication of five naye paise. Then, "clause (*p*) shall be omitted."

"in clause (*v*), in item (i), for the words "member of panchayat", the words "member of a Taluk Board or panchayat" shall be substituted;"

"in item (ii), for the words "President or Vice-President of a Taluk Board or Chairman or Vice-Chairman of a Panchayat" shall be substituted."

"in item (iii), the words "or District" shall be omitted;"

"in item (iv), after the word "Bangalore", the words "or of Hubli Dharwar" shall be inserted and the words "or a District Board" shall be omitted;"

This is because the Hubli-Dharwar Corporation which has come into existence subsequent to the Mysore Court-fees and Suits Valuation Act of 1958 would have to have the provisions applicable to the Bangalore City Corporation. Therefore, in clause (*v*), taking into consideration the formation of the Hubli-Dharwar Corporation and the existence of taluk boards, necessary amendments have been proposed. In Article 11 item (3), clause (*p*) is proposed to be omitted as the Advocates are no longer enrolled by the High Court but they are enrolled by the Bar Council under the Advocates' Act.

Sir, these, in brief, are the salient features of this amending Bill and I request that the House will take into consideration the provision of the amending Bill.

Sri M. R. PATIL (Hubli).—Sir, I did not follow the explanation of clause 5, amendment to Section 63, for the substitution of the word "representation" for the word "presentation".

Sri M. V. RAMA RAO.—Sir, Section 63 in Chapter VII of the principal Act deals with refund in cases of delay in presentation of plaint, etc. It says:

"Where a plaint or memorandum of appeal is rejected on the ground of delay in its presentation, or where the fee paid on a

plaint or memorandum of appeal is deficient and the deficiency is not made good within the time allowed by law or granted by the court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected.

"Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded."

That is the provision contained in Section 63 as it stands at present.

The proposed amendment reads in clause 5 of the amending bill: "In sub-section (1) of Section 63 of the principal Act, for the word "presentation", the word "re-presentation" shall be substituted." The word "re-presentation" means that unless a plaint or memorandum of appeal has been presented, it cannot be rejected.

Mr. SPEAKER.—There cannot be a delay prior to presentation.

Sri M. V. RAMA RAO.—Unless it has been presented atleast once, it cannot be either admitted or rejected. If it had been rejected, it would have been presented before. After its having been returned, if it should be presented again, it is "re-presentation". This word was considered more appropriate.

Sri G. V. GOWDA.—Because there is delay in presentation, it is rejected. Then an application is filed claiming refund of court-fee. The delay is not on the ground of re-presentation.

Mr. SPEAKER.—When it is presented with inadequate court-fee, there is a deficiency. The appeal is rejected on the ground of delay. Suppose Rs. 100 was to be paid and only Rs. 90 was paid. Then it is returned to make up the deficit. Then the party pays the balance fee and presents it. It is then said to be re-presented. If that is presented beyond the time or limit allowed, then it means there is delay in re-presentation.

Sri G. V. GOWDA.—Supposing there is delay in the very presentation.

Mr. SPEAKER.—Then it is a bar under the Limitation Act and it would be rejected. The idea of re-presentation comes when there is any deficit to be made up and a period has been fixed and that period would not be counted for the purpose of calculating limitation.

Sri G. V. GOWDA.—That contingency is covered by the next clause. If it gets rejected, the question of refund arises. If it is presented beyond time or if it is not represented before the time assigned.....

Mr. SPEAKER.—Is the Hon'ble Member referring to the delay in the first presentation itself as being beyond the period of limitation? It cannot be called 'delay'.

† Sri G. V. GOWDA. – That is a matter to be considered. So far as the amending bill is concerned, the observations made by the Hon'ble Minister is nothing more than what is contained in the Statement of Objects and Reasons. Excepting the minor amendment suggested in clause 10, the reasoning behind the other amendments to the original Act are neither satisfying nor convincing. In my opinion, no *prima facie* case has been made out for amending the Act.

It is stated that Stamp Duty is not chargeable in respect of instruments executed by or on behalf of Government and therefore it is argued, why not the court-fee payable by Government be also exempted. That appears to be the main intention for amending Section 4. We cannot for a moment think of equating court fees with stamps payable under the Stamp Act. Stamp duty is levied and is to be paid when transactions take place between parties, one of which might be the Government itself. But court-fee is payable on something else, that is, on matters which are taken for adjudication in courts. When parties approach the Court for obtaining reliefs, they must pay the necessary fee. Here is a case where Government approaches the court for relief ..

Mr. SPEAKER.—Suppose a party wants copies. Where is it to be provided ? Under the Stamp Act or here ?

Sri G. V. GOWDA.—Under the Stamp Act.

Mr. SPEAKER. – Court-fee is fixed under the Court-Fees Act and it has to come here.

Sri G. V. GOWDA.—Copies are obtained as a result of the orders of the court or the matter being in the court.

Mr. SPEAKER.—Suppose the party wants a copy of the deposition or copies of documents produced by the other side. Here there is no adjudication by the court or orders of the court.

Sri G. V. GOWDA.—Those papers are before the court in the course of adjudication. Documents are exhibited at the instance of parties.

Mr. SPEAKER.—I ask for copies of documents filed by myself or by the opposite side because my originals are in the court.

Sri G. V. GOWDA.—It has come into existence as a result of parties having gone to the Court.

Mr. SPEAKER.—So, it is in the process of adjudication, either directly or indirectly.

Sri G. V. GOWDA.—It cannot be equated with a particular instance. Supposing a document is in possession of Government and I apply for a copy, that is a different matter. So far as documents that are got exhibited are concerned, the parties have got to pay the Court-fee because they rely on these documents and the Judge is making use of those documents for purposes of adjudication. No where, I have heard about this and I do not know whether this system exists anywhere.

Mr. SPEAKER.—To whom do you pay ? You pay to the Government.

Sri G. V. GOWDA.—Let the Government take it back, it is a different matter.

Mr. SPEAKER.—This is paid in order to secure relief.

Sri G. V. GOWDA.—Such being the case, we cannot claim exemption. It is a discrimination under Article 14 of the Constitution.

Mr. SPEAKER.—How does the question of discrimination arise ?

Sri G. V. GOWDA.—Let it pay and take it back, because it is the Government that runs the administration. Such being the case, are all placed on the same level so far as judiciary is concerned ?

Mr. SPEAKER.—In the case of Government Pleaders, who appear in civil suits, is it enough if they file a suit or a Vakalat ? What does rules provide ?

Sri G. V. GOWDA.—They have got to affix Court-fee stamp to the Vakalatnama.

Mr. SPEAKER.—Perhaps signature is wanted.

Sri G. V. GOWDA.—Regarding amendment to section 4 is concerned my submission is, there cannot be any exemption given to the Government, either to seek a remedy by filing a suit or preferring an appeal or accepting document without affixing the Court-fee stamp. It follows the principles laid down under Article 14 of the Constitution. They can equally claim exemption in so many other matters. I request the Hon'ble Minister kindly to bestow a deep thought over this matter whether such a thing can be had. Later on, under the administration of Justice, they would show the income derived by the sale of these Court-fee stamps. Why should Government claim exemption in this matter, I fail to understand. The proviso only seeks exemption in respect of documents filed, exhibited or recorded by or on behalf of the State Government. I remember to have heard the Hon'ble Minister saying that even in respect of a plaint the Court-fee stamp that is affixed, they are seeking exemption. But, this proviso wants exemption from the payment of fee in respect of any document filed, exhibited or recorded.

Regarding amendment to Section 50 :

> "For the purposes of jurisdiction, the actual market value of such lands should be taken into consideration".

In fact, this argument was advanced at the time when the parent Act was enacted. So far as amendment to section 63 is concerned, that is the point raised by Mr. M. R. Patil, for substituting 'representation' to the word 'presentation'. What the original section 66 contemplates is, that whenever a plaint is presented or a memorandum of appeal is presented beyond time, or whenever a deficient fee is paid or whenever time is allowed and is not filed within that time, in all these cases the plaint or memorandum of appeal can be rejected. Under such circumstances, it is the intention of the clause to refund the Court-fee paid by the plaintiff or the appellant. It necessarily leads to the question that it should be returned for representation and if the representation takes place beyond the time allowed, then the question of payment would arise. That is the meaning, naturally if the word 'representation' is substituted would convey. Therefore, I am submitting that if there is

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any delay in presentation or if there is delay after representation, the relief has got to be given. Even if a plaint or a memorandum of appeal beyond the period allowed under law is presented, even then it is rejected because it is time-barred.

Mr. SPEAKER.—There are only three categories, deficit court-fee, deficiency not made good within the time and the delay in payment is not condoned.

Sri G. V. GOWDA.—This delay in payment is not condoned. So, it is a case of Court-fee not made good within the time allowed. Therefore, the question of representation does not arise.

Mr. SPEAKER.—If it is made good, the document must come again.

Sri G. V. GOWDA.—When there is deficit of court-fee, the concerned person will be asked to make good. If he does not do it, it is rejected. In certain matters, the plaint may not be rejected and the concerned Advocate may be asked to fulfil such reports as are required. In such cases, the memorandum of appeal will not be rejected. So, they will take to file an affidavit.

So, the question of representation in such cases would not arise. Even assuming what the Hon'ble Minister for Law is saying is correct, I want cases of plaint and memoranda of appeal which are filed beyond time also to receive some relief as is contemplated in section 3. That is the original intention. Inst ad of confusing the matter, it is better to have presentation and representation.

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Mr. SPEAKER.—The effect of accepting this amendment by the House will be.....

Sri G. V. GOWDA.—Supposing I file a memorandum paying Rs. 250 court-fee, and afterwards it is rejected by the court that it is filed beyond the time.

Mr. SPEAKER.—Perhaps the Hon'ble Member wants to say that the case is not rejected on merits, but on technical grounds; even in such cases does he want that the court-fee may be paid back?

Sri G. V. GOWDA.—Therefore the word as it is, presentation also includes representation. If the word 'representation' is introduced, the first type of cases, as I pointed out, would not get any relief.

Mr. SPEAKER.—Instead of saying 'rejected', supposing the Judge says, it is 'dismissed'?

Sri G. V. GOWDA.—Even in such cases, what I suggest is that the court-fee should be refunded Sir. Even at the initial stage, if it is dismissed, naturally he is entitled for similar relief. So, I submit that it is desirable to leave the section as it is.

So far as clause 6 is concerned, the original clause, I do not know how it has become impossible of implementation. The original clause as it stands Sir, reads :

> " The State Government may, by notification in the official Gazette reduce or remit, all or any of the fees chargeable under this Act, and may, in like manner, cancel or vary such notification."

In the amending Bill, in clause 6, it is said :

> "(1) The State Government may, by notification in the official Gazette, reduce or remit, in the whole or any part of the State of Mysore, if in the opinion of the State Government, it is necessary in public interest so to do, the fee payable in respect of any particular class of document or any of the documents belonging to such class, or any documents when filed, exhibited or recorded by or acted on or furnished to, any particular class or persons or any members of such class ; and may in like manner cancel or vary such notification."

In my humble opinion Sir, this is an attempt to take too much power and it is likely to be abused also, because it contemplates relief to a class of document or documents belonging to any class of persons.

MR. SPEAKER.—Persons suing *informa pauparis*, etc.

SRI G. V. GOWDA.—That relief could be granted even now under Section 70.

Then Sir, clause 7 says:

> " In section 75 of the principal Act, for the words ' six naye paise ', the words ' ten naye paise ' shall be substituted."

This I welcome Sir, because even under the same Act, it has been enhanced to 10 nP.

In clause 77—this is also correct, Sir. It contemplates amendment to schedule and it says :

> " In Article 4, in column (2), after the word ' Judgment', the words ' if presented before the ninetieth day from the date of the decree ' shall be added."

Here, originally one-half of the fee leviable on plaint and memoranda sought for review was the relief under article 5. Now, the relief sought in the application for review is sought to be given if it is presented before the ninetieth day from the date of the decree. That also we can welcome, because they are not able to assess the relief sought. That is also welcome. But I cannot understand the application for review of judgment if presented on or after 90th day from the date of decree. If it is presented before 90 days, one-half of the court-fee is levied. If it is presented beyond the period prescribed, namely 90 days, the fee eviable is the full fee. There appears to be no limitation for this sort of filing of application for review of judgment Sir. This gives scope for filing review applications at any time even after the 90th day period suggested.

MR. SPEAKER—I say it is a simple application. It is on 12 annas or Rs. 1-8-0 stamp paper, or whatever it is. It has nothing to do with the court-fee paid on the plaint or the appeal.

†SRI G. V. GOWDA.—So the court fee that is to be paid also is fixed. If it is fixed beyond the time, if it is entertained by exercising inherent power, if within that time the application is filed, they have got to pay a court fee stipulated under the Court-fees Act. Certain enactments give scope for the court to apply Section 5 and entertain the application beyond time. In such circumstances, Government wants them to pay more court fee. Is it justifiable? That discretion is given to the court. If they entertain the application beyond time these people have got to pay more court; not otherwise. On that ground it is not also justifiable.

On page 5, item (4): 'in Article 16, in item (a), the words 'or to any Magistrate' shall be omitted. And for the words 'other Executive officer' the words 'any statutory or other authority or any officer' shall be substituted. This is in respect of vakalatnama or any papers signed by an advocate signifying or intimating that he is retained for a party—

> "When presented—to any court (other than a High Court or to the Mysore Revenue Appellate Tribunal or Sales Tax Appellate Tribunal or to any Magistrate) or Deputy Commissioner or other Executive Officer. One rupee."

In vakalatnama or memo of appearances that used to be filed before the Magistrate, no court-fee need be paid. That is the thing that existed till now. By removing the words 'or to any Magistrate', it would become necessary to pay a court fee of one rupee when a vakalatnama is filed before a Magistrate under Article 16 (a). Under Article 16 as it is existing till to-day, the vakalatnama or memo of appearances to be presented to the Magistrate need not be stamped with court fee. Now by accepting this amendment, necessarily the vakalatnama or memo of appearance that is to be filed before any Magistrate should carry a court fee of Rupee one. That is an additional income and I should also like to point out that there is no financial memorandum attached to the amending Bill. So far as this amendment is concerned, it takes away the right that has been in vogue under the very many enactments for a very long time that any memo of appearance or vakalatnama need not cary any court-fee stamp. That will work as a hardship so far as the accused are concerned. Even from the humanitarian point of view, the accused is not to be taxed with anything until his guilt is proved; that is the principle with which exemption has been given for these class of people. Even the application for bail need not be stamped. Such being the practice, I do not understand why we should now do anything to the negation of the very principle, to the negation of that assumption that the accused must be given all sorts of facilities to prove his innocense or to get himself defended. Therefore, the Honourable Minister will at least consider to retain article 16 as it is and see that the long established principle is allowed to remain.

†Sri V. S. PATIL (Balgaum-1).—Some of the amendments were really due and I must thank the Minister for bringing them before this House. They were quite essential. But at the same time I have to point out that some of them appear to be rather unnecessary or they may defeat the very purpose which is in the mind of the Government. Regarding clause 3, my friend Mr. G. V. Gowda has just now said in detail, but at the same time I should like to ask the Government that whatever amount of court-fee is paid by Government in these civil matters, mostly or I can say in 50 per cent cases all that amount is to be charged as the cost of the suit and if the Government is right, then that amount is recoverable from the other side. If the court fee is not to be paid by the Government, ultimately the benefit will go to the party who is opposing the Government unsuccessfully. So, that will be a loss to the Government in the long run. Even if the Government is to pay the court fee that amount will be taken as credit to the Judicial Branch of the Government and that very amount is to be recovered from the unsuccessful party against whom the proceeding is started. But if this exemption is there, then certainly Government will not get anything from the other side; that is ultimately a loss to the Government. I feel under the present stringent economic circumstances in our State, we should try to see how far we can legally collect the amounts and not remit them unnecessarily. In fact, Government is not at all the loser even if they pay the court fees on these various documents. I request the Minister to consider it from the financial aspect of the case and from the aspect that those who oppose the Government unnecessarily, whether they are to be given this benefit of exemption.

Then regarding the amendment covered by clause 4, it was quite essential and the reasons given for bringing this amendment are also good. And I am of same opinion that the artificial valuation which we have fixed for the agricultural land cannot be the market value and for the purpose of jurisdiction, the market value must be the criteria for trying these suits. So, this amendment is quite essential and we have to support it. The values of agriculutral lands have gone up 4 to 5 times than what they were just before the last war. So, we have also to increase the jurisdiction of the Munsiffs' Courts as well as the Civil Judges, Courts. If this amendment is not there, then, practically the higher courts will have no original jurisdiction at all; so far as agricultural lands are concerned, and we will be giving powers to inexperienced persons to try suits the value of which may be beyond their jurisdiction in the real sense of the term. So, this change of market value is essential and I feel we must thank the Hon'ble Minister for bringing this amendment.

Mr. SPEAKER.—Then, what happens to the laywer's fee ?

Sri V. S. PATIL.—Sir, already our fees are too low and it will have to be increased.

Mr. SPEAKER.—Is it the Minister or is it the High Court that has to do it ?

Sri V. S. PATIL.—Sir, everybody, whether he is a labourer in the field or in the factory or serving in the Government, is getting increased emoluments and the fee of the lawyers also should be increased. Before the war we were taking 5 per cent after a certain limit. Now, it is increased to 6.25. If you look to the rise in prices, I think, we are the most neglected people both by the public as well as the Government.

Mr. SPEAKER.—Can we do something by legislation ?

(laughter.)

Sri V. S. PATIL.—Sir, so far as clause 5 is concerned, I agree with the objections raised by my friends that the words 'presentation' must be there and not 'representation.' Representation will practically nullify the very intention for which we had enacted the original section. When the plaint or memorandum of appeal is returned to the party if he has filed in a wrong court or for some technical defect and after he represents it, then, this clause will come in. Why this representation appears here, I do not understand. When we framed the original clause 63, our intention was clear that if the plaint or memorandum of appeal is presented, but there is some defect such as out of limitation, deficit of court fee, etc. and if it is relected, then he would be entitled to get the court fee back. There are no Notes on this in the Bill. It is silent. So, I submit that this 'representation' will create confusion and nullify the very intention for which Section 63 has been incorporated in the Act. I request the Hon'ble Minister to drop this particular clause altogether and avoid create confusion.

Mr. SPEAKER.—One hour allotted for this Bill is expiring. I extend the period by half-an-hour. I find only three amendments. How does the Hon'ble Minister feel about it ?

Sri M. V. RAMA RAO.—It may be enough, Sir.

Sri V. S. PATIL.—Then, clause 6, amendment to Section 70. Before we go to this, I was intending to bring one further amendment so far as this remission is concerned. It is covered from Sections 63 to 70. In Section 66, refund on settlement before hearing comes in. When a suit is dismissed on some grounds that have been enumerated in Section 66, then, the plaintiff is entitled to get some refund of fee. But, suppose, the plaintiff withdraws the suit before hearing; then, there is no remedy at all. If the plaintiff withdraws the suit even before summons are issued, what is to be done ? Supposing, I file a plaint but I do not pay the process fee for services on the other side. Ultimately, within three months of that date, the suit is liable to be dismissed under the Civil Procedure Code. In that case, the court has done nothing. They have waited for three months to see whether the plaintiff pays the process fee ; otherwise, automatically the court passses an order dismissing the suit. In that case, are we not to give relief to the plaintiff ? After the plaintiff had filed a suit, he would have taken the process or summons might have been issued. Subsequently he wants to withdraw the suit with or without the consent of the other side. In that matter, should we not give him some relief ? The third contingency is this : if the

plaintiff, after filing the suit, remains absent even after the summons were served on the other side and the suit is dismissed Should we not give some relief to him? I was thinking of these problems sometime past and I wanted to move a separate bill. But I knew that moving and getting adopted a Private Bill is an uphill task. That is why I am bringing these matters to the notice of Government and the Minister for Law. If Government feels that these are contingencies worth considering, a further amendment might be brought to this Act to give relief to the parties concerned. Court fee is paid for a specific service expected from the court. When that Service is practically not rendered by the dimissal of the suit at the earliest possible stage, why some relief should not be given to the party concerned? I hope Government would consider this matter. I could have brought amendments to the present bill but could not do so because Section 66 of the original Act is not sought to be amended. Therefore, I am not entitled to give amendment under the rules. Yet I hope that in the interests of justice, the three contingencies would be considered by Government.

5-00 P.M.

About the next amendment to clause 7, instead of 6 nP. it is proposed to be raised to 10 nP. It may not affect too much. Yet, it is an increase in court fee and I do not know whether it amounts to additional taxation requiring the sanction of the Governor. I would like you, Mr. Speaker, to direct that some indication be given so that we would know whether the requisite sanction of Governor has been obtained. That is the practice in the Bombay Assembly and the Lok Sabha.

Amendment to clause 8 is necessary and we have to accept it without comment. I cannot agree with my friend Sri G. V. Gowda.

I would request the Hon'ble Law Minister to consider my suggestions and see if there is any need for further amendments.

† Sri M. R. PATIL.—Sir, in clause 5 of this amending bill, which relates to the original Section 60, the word representation is to be substituted for the word "presentation".

Sri V. S. PATIL.—May I interrupt, Sir? I find mosquitoes under my seat.

Mr. SPEAKER.—Are they biting mosquitoes? I have given instructions for spraying. I will have the Hall sprayed again.

Sri S. C. KOLKEBAIL (Coondapur).—There are no mosquitoes on this side.

Mr. SPEAKER.—There is discrimination. Because of Sri Patil's absence, they might have accumulated. (*laughter.*)

Sri M. R. PATIL.—The original Section 63 reads like this in the first part:

> "Where a plaint or a memorandum of appeal is rejected on the ground of delay in its presentation or where the fee paid on a plaint or memorandum is deficient and the deficiency is not

(SRI M. R. PATIL)

made up within the time allotted by law or granted by the Court ..."

In the original clause the word 'delay' does not specify definitely as to what the delay represents. There is some ambiguity in the original clause.

Mr. SPEAKER.—Delay means, there should be a definite time limit within which the party is bound to present. It is a mandatory direction.

Sri GANGADHARA NAMOSHI (Gulbarga).—On a point of order, Sir. There is no quorum.

Mr. SPEAKER.—There is no point of order because there is quorum.

Sri M. R. PATIL.—So, Sir, whether we accept the word 'presentation' or the word 'representation' proposed to be substituted, it must relate to the delay in respect of a matter, for doing which, a specific time or a period is specified either by law or by rule of law.

Mr. SPEAKER.—It must be a positive mandatory direction which he is bound to fulfil. I may, for the luxury of it, buy stamp and keep it. Nobody compels me to launch a litigation.

Sri M. R. PATIL.—I thank the Chair for the clarification. As we know, a suit is filed in Courts or memorandum of appeal is filed by presenting it to the Court. The head-note of this Section is: "Refund in cases of delay in presentation of Plaint, etc.," The word 'delay' as I understand, as it has been put in the existing section, relates to the delays or can be construed to mean as relating to the period of limitation according to the Law of Limitation.

Mr. SPEAKER.—Why is it called delay ? It is either within the period of limitation or outside.....

Sri M. R. PATIL.—Then in that case, this word 'delay' must relate to some provision of law where the word 'delay' is used. The word 'delay' must occur somewhere else, either in the existing Court Fee and Suits Valuation Act or in some other Act. Otherwise, if the word 'delay' has not occurred in any of the laws of this State or under rules made thereunder then we have to construe it as a word not properly used, but as relating to the presentation of the plaint beyond the time provided for doing so. That is how we can construe it.

Referring to the Civil Procedure Code, Order 4, rule (1) says :

"Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf."

There is no doubt on this point. Coming to Order 7 rule (10) of the C.P.C.,...

Mr. SPEAKER.—That, we are not concerned with. As the time left for this Bill is short, may I call the Hon'ble Minister for Law to enlighten us in this behalf ? The Hon'ble Minister is requested to deal with the particular point.

† Sri M. V. RAMA RAO.—I am rather inclined to tell you the Chair that it may be better to extend the time in view of the doubts expressed. Apart from that, I shall deal with 'presentation' and 'representation'.

The Hon'ble Members will see that Clause 63, in which the word is proposed to be amended, consists of two sub-clauses, and it is found in the Chapter which deals with refunds and remissions, Chapter VII of the Court Fee Act. Sub-section (1) of Section 63 deals with al. the cases in which the entire Court fee paid on the plaint or memorandum of appeal which has been rejected on one or the their grounds, specified in this sub-section, is payable. Sub-section (2) deals with the case of memorandum of appeal which is rejected on the ground which was presented within the time of limitation, and a refund of one-half of the fee is to be made. That is the distinction. In the case of a memorandum of appeal, there is, what a practising lawyer is no doubt familiar with, an application for condonation of delay. In the case of a plaint, no application for condonation of delay is provided for. And, in the case of a plaint in sub-section (1) or a memorandum of appeal which is rejected on the ground of delay in its presentation, if the word 'delay', I may at once state, does not relate to the law of limition, if it is time-barred and the plaint is presented to the Court beyond the period limited by the law of limitation, it is liable to be rejected; and unless it is received as being within time or as having been presented at least on the last day of the law of limitation, it could not be said to have been presented at all. After having been presented, if either by reason of fee that is payable on the plaint or memorandum of appeal not being sufficient or as being dificient and the deficiency is not made good within the time allowed by the law or granted by the Court, the power of the Court to grant time for such payment is not governed by any provision of law or fixed rules. It is a matter within the discretion of the Court and the Court in a particular case may grant such time as it thinks, in the circumstances, reasonable. If the deficiency is not made up within the time granted by the Court or if when such delay occurs and the Court does not condone the delay and the plaint or memorandum of appeal is consequently rejected, then the Court shall direct the refund to the plaintiff, which has been rejected. That is what is provided for under sub-section (1).

Sri M. R. PATIL.— Sir, is it your opinion that there is no provision in any law to make-up deficit court-fee? If the original plaints do not bear the proper court-fee, or if it had borne insufficient court-fee, it ought to have been rejected and there is no provision for make up deficit court-fee under any statute.

Sri M. V. RAMA RAO.—Sir, there are two things that are dealt with under this sub-section (1).

MR. SPEAKER.—Because sub-section (2) is not printed along with this, it has given some scope for certain misgivings and doubts.

Sri M. V. RAMA RAO.— Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one half of the fee is refunded. Where an application is made beyond the time fixed by the law praying for the detention of the appeal, then the memoranda of appeal is rejected and in such cases one-half of the court fee paid by the litigant is liable to be refunded.

Mr. SPEAKER.—So far as the appeal is concerned, this amendment is inevitable. The first clause applies to appeals as well as plaints. Therefore there will be no inconsistency if you do not put the word 'represented' in so far as appeals are concerned.

Sri M. V. RAMA RAO.—In sub-section (1) of 63, we deal with both the plaint and a memoranda of appeal. If a plaint is presented beyond the period of limitation no question arises as to what should be done with it. It is going to be rejected. It would read as if on such rejection, the entire court-fee paid on the plaint has to be refunded. Knowingly or unknowingly if the plaint has been presented to the court beyond the time limited by the law of limitation, the plaint is to be rejected. When the stay is filed within the time, then the question arises, and the text of the section as it now stands says that the entire court-fee paid thereon has to be refunded.

Mr. SPEAKER.—Clause (1) deals with the entire category of cases coming under 'representation'. Clause (2) deals with 'presentation' and so far as presentation is concerned, refund is provided for only in the case of appeals, whereas the entire concept contained in clause (1) deals only with appeal. And that means first presentation and second presentation. Therefore the word presentation as it stands includes representation also.

Sri M. V. RAMA RAO.—I am entirely in agreement with what you have been pleased to say, Sir. In the case of a plaint where the proper description of the properties of the suit was a sufficiently descriptive account of the property involved in the litigation is not given, the chief ministerial officer of the court who receives the plaint gives the direction that these deficiencies should be rectified and allows some time - - say three days or 15 days, within which it should be done and if it is not done, on that ground, the plaint has to be rejected, then the entire fee has to be refunded. This is one category of cases.

The other category is, where the memoranda of appeal on which court-fee payable might have been wrongly computed and the court which receives the memoranda of appeal gave some time within which the deficient court fee payable on the memoranda of appeal should be made good, and if it is not made good within the time allowed, and on that ground the appeal is rejected, in such cases also the entire court-fee has to be refunded. That is the position. Therefore, the word 'representation' would convey a clearer meaning and portion instead of the word 'presentation', because presentation is usually the filing of the document in the court in regard to first cases; and if it on that day alone, the word 'delay' is related to the law of limitation. If it is time barred, there is no case for representing it.

Sri M. R. PATIL.—Sir, he did not explain the cases of dealy in representation.

Sri M. V. RAMA RAO.—'Dealy' as I said, if the court has granted time for making good the deficiency in respcet of a plaint or memoranda of appeal, that is provided for in the text of the sub-section.

Mr. SPEAKER.—Suppose a plaint is presented and on that deficit court-fee should be paid in a week on that an endorsement is made and that the plantiff's advocate takes it and it remains there.

Sri M. R. PATIL.—The Court cannot return the plaint on that ground. The court has to give the plaintiff time and if by that time the deficit court fee is not paid by the plaintiff, the plaint has to be rejected. There cannot be rejection of the plaint without giving an opportunity to the party to make up the deficiency.

Mr. SPEAKER.—Therefore, the period is fixed and the plaintiff noncooperates. He does not take it back.

Sri G. V. GOWDA.—The plaint is not returned and the plaint remains in the office. He is normally asked to pay the deficit court-fee by a particular date.

Sri M. R. PATIL.—Let us be clear as to what that word 'delay' relates - - Delay in the presentation of the plaint or representation of the plaint. Let us take a concrete case. Let us see what is the occasion on which delay in representation arises. Under which law it arises and under which rule it arises?

Mr. SPEAKER.—Suppose the court has given seven days time and I take the plaint back ten days later.

Sri M. R. PATIL.—The return of the plaint does not arise at all. Either it must be rejected on account of delay in paying deficit court fee or on some other ground, no cause of action, or something like that.

Sir, to continue my argument, the question is, as to the original intention of the section as it now stands. If the original intention of the section was that if the plaint has been presented beyond the period of limitation provided by the law for the presentation of plaint, then in that case, the word 'delay' has been misused or has not been properly used and therefore it has to be corrected to the effect that if a plaint is rejected on the ground of its having been presented beyond the period of limitation provided by law as it has been presented in the case of memoranda.

Mr. SPEAKER.—There may be errors, there may be discrepencies in filling up, there may be blanks - the court will give it back; is it not?

Sri M. R. PATIL.—The party has to give an application to amend his plaint. The amendment is made by the court, it is initialled by the court and it is done by the officer of the court. The officer has no right to give it back.

After all, for accommodation he may just hand it over to me for inspection, but that is not the formal returning of the plaint. Order VII, Rule 10 says "The plaint shall at any stage of the suit be returned to be presented to the court in which the suit should have been instituted." That is want of jurisdiction. Then clause (2) of that Rule says: "On returning a plaint, the Judge shall endorse thereon the date of such presentation and the return..."

5-30 P.M.

Mr. SPEAKER.—The return of the plaint under those circumstances is perhaps something different from asking the plaint to be taken back for rectifying small errors.

Sri M. R. PATIL.—According to my memory, there is only one provision in the Civil Procedure Code for returning a plaint That is Rule 10 of Order, 7 where the plaint is returned on account of want of jurisdiction so that it may be presented in proper court

Mr. SPEAKER.—It becomes a plaint proper only after it is admitted.

Sri M. R. PATIL.—I am reading from the provision of the Rule itself. The Rule itself says : "The plaint shall at any stage of the suit be returned to the party....."

Mr. SPEAKER.—It is being treated simply as a document; only when it is accepted, it becomes a plaint.

Sri M. R. PATIL.—Then in that case, the court would not have applied its mind as to wether it has got jurisdiction or otherwise unless it has been registered.

Then the other provision is rule 11 of the Civil Procedure Code. That refers to the rejection of the plaint.

"The plaint shall be rejected in the following cases :

(a) where it does not disclose a cause of action ;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so ;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so ;

(d) where the suit appears from the statement in the plaint to be barred by any law."

Whether it is registered or not, it is a plaint. Now the question is where the plaint or memorandum of appeal is rejected on account of delay in presentation. What is intended is to substitute the word "representation'. Whatever we mean should be put in unambiguous terms. Let me assume that what the Government now intends by this proposed amendment is, that it relates to matters where the plaint is once presented to the court and that court returns the plaint to the plaintiff on the ground that it has no jurisdiction, that the plaint ought to be presented in another court. If it is contended on the part of the Government that it applies to such cases, my submission is, there is no provision made in the Code of Civil Procedure that the plaint returned must be presented within a particular time, nor is it laid down in the Limitation Act that a plaint returned for want of jurisdiction must be presented within a particular time. After all, it depends upon the court entertains the suit.